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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JEROME JOHNSON,

Petitioner,

- against -

ORDER

07-CV-5224 (NGG)

JANICE M. KILLIAN and ROSLYNN R.  
MAUSKOPF, ESQ.,

Respondents.

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NICHOLAS G. GARAUFIS, United States District Judge.

On June 20, 2008, the court determined that Petitioner Jerome Johnson's ("Petitioner") motion under 28 U.S.C. § 2241 to modify his five-year term of supervised release should have been filed as a motion under 28 U.S.C. § 2255 because it was a challenge to the legality of the imposition of his sentence and not to the conditions of his confinement. (June 20, 2008 Order (Docket Entry # 9).) Pursuant to Adams v. United States, 155 F.3d 582, 584 (2d Cir. 1998), before recharacterizing his motion, the court provided Petitioner with an opportunity to notify the court if he did not consent to such recharacterization.

By letter dated June 30, 2008, Petitioner has notified the court that he does not consent to a recharacterization of his motion as one filed under 28 U.S.C. § 2255. (June 30, 2008 Letter (Docket Entry # 11).) As he wrote, "[a]t this time Petitioner is notifying the Court that Petitioner is going to leave his Motion a 28 U.S.C. § 2241 writ of habeas corpus because of the strict procedural requirements under 28 U.S.C. § 2255." Id. In accordance with the June 20, 2008 Order, Petitioner's motion is therefore dismissed without prejudice because the relief he seeks is not available under 28 U.S.C. § 2241. Petitioner is advised that, as he now understands the

consequences of filing an improper 28 U.S.C. § 2241 motion, if, in the future, he files another motion under 28 U.S.C. § 2241 that seeks relief that is only available under 28 U.S.C. § 2255, the court will dismiss the motion without providing notice.

Petitioner's motion for a writ of habeas corpus is dismissed without prejudice. As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability shall not issue. See 28 U.S.C. § 2253(b)(2). The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: July 10, 2008  
Brooklyn, New York

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS  
United States District Judge